

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER KIRK,

Plaintiff,

CIVIL ACTION NO. 07-CV-14146-DT

vs.

DISTRICT JUDGE PAUL D. BORMAN

**MICHAEL KULWICKI,
et al.,**

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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REPORT AND RECOMMENDATION

I. RECOMMENDATION: Plaintiff's Motion for Entry of Default (docket no. 22) should be **DENIED.**

II. REPORT:

A. *Factual Background*

Plaintiff filed a Motion for Entry of Default Against Defendants Michael Kulwicki, City of Detroit, County of Oakland, Deputy Chief Roeske, Richard Farrell, and Dennis Marshall III on March 17, 2008. (Docket no. 22). Plaintiff also submitted an affidavit. (Docket no. 23). A Response has been filed by the Madison Heights Defendants (docket no. 28) and the County of Oakland and Oakland County Sheriff's Department (docket no. 31). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(e). This matter is now ready for ruling.

B. Standard

The plaintiff bears the burden of showing that the defendant against whom the plaintiff is seeking default has been effectively served with process. 10A Charles Alan Wright, Arthur R. Miller, and Mary Kay Kane, Federal Practice and Procedure § 2682, p. 14 (3d ed. 1998).

C. Analysis

Plaintiff has failed to carry his burden of showing that the named Defendants have been properly served. The record does not contain any waiver of service of process for these Defendants. The record also does not contain any acknowledgment of service of process or certificate of service for the Defendants named in this Motion. The Response of the Madison Heights Defendants states that Defendants Kulwicki and Roeske are no longer employees of the Madison Heights Police Department. The City of Madison Heights will be ordered to provide under seal to the Court the last known addresses of these two Defendants so that the U.S. Marshal may attempt service of process on them at those addresses. Because Plaintiff has failed to show that he has properly served any of the Defendants named in this motion, his Motion for Entry of Default should be denied.

III. NOTICE TO PARTIES REGARDING OBJECTIONS:

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve

all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as “Objection #1,” “Objection #2,” etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: April 23, 2008

s/ Mona K. Majzoub

MONA K. MAJZOUB

UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Report and Recommendation was served upon Roger Kirk and Counsel of Record on this date.

Dated: April 23, 2008

s/ Lisa C. Bartlett

Courtroom Deputy